

# MEMORANDUM

## Comfort Lake-Forest Lake Watershed District

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**To:** Board of Managers **Date:** September 4, 2020  
**From:** Mike Kinney  
**Subject:** Watershed Management Plan Update - Regulatory and Interagency Coordination/Impact

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### Background/Discussion

At the last meeting, staff presented some information and questions for the Board to consider as part of the Watershed Management Plan Update. Managers agreed to review the information and respond to questions as a homework assignment between that meeting and the next meeting's board packet distribution. The questions are included again below for reference. The full informative memo from August 27<sup>th</sup> meeting is available at [www.clflwd.org/8-27-20RegularBoardMeetingPacket.php](http://www.clflwd.org/8-27-20RegularBoardMeetingPacket.php). Managers' written responses are included below.

In order to keep making forward progress on the plan writing, the first draft lake management district profiles are enclosed for managers to start reviewing. We request that edits be sent to staff prior to the September 24<sup>th</sup> regular meeting, if possible. Note that this is not the final proposed design/formatting for the plan, but merely the raw content. Once the content is largely completed, staff will input into InDesign for the final product. Staff proposes the final formatting to be similar to Minnehaha Creek's WMP: [Example MCWD Subwatershed Plan \(similar idea to LMD Profile\)](#).

### Questions to Consider

In Chapter 8, the District will express its intentions as to the roles it and its municipalities will play in using permitting and regulatory programs to achieve identified water resource goals and priorities. Rulemaking itself is not a part of the District's WMP revision process. However, it is typical after a WMP revision to review existing rules and make adjustments so that the rules continue to track policies articulated in the WMP. In order to draft Chapter 8, staff seeks the managers' guidance as to where the District will wish to continue to assert, or newly assert, its own regulatory authority; where it will defer to its municipalities or other public agencies with jurisdiction; and the level of resources it would apply to informal or more formal coordination with its municipalities in regulatory matters.

The Board may want to discuss the following questions:

1. Is the District's regulatory program as it now exists allowing the District to have adequate oversight of activities with water resource impacts? If not, what impacts do the managers observe that the District is not adequately addressing in its regulatory program, but ought to be?
2. Do the managers wish to encourage the District's municipalities to enhance their own programs and take on a sole permitting role, or do they prefer that the District continue to apply its rules throughout its territory?
3. Do the managers have a preference for voluntary shoreline protection programs versus mandatory/regulatory programs?
4. What is the managers' vision as to coordination with municipalities, whether that be in an informal or more formalized fashion?
5. How sensitive are the managers to the funding/staff resource implications of the preceding questions?

**Attached:** Draft Lake Management District Profiles (subsection of Chapter 4)

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#### Manager Responses to Discussion Questions

##### President Spence

As far as all the points, I think the biggest issue we face regarding all of them, is not that there are no tools for regulation and enforcement of any shoreline or shoreland alterations, but rather there is no way to ensure compliance from the landowners with the basic premise of obtaining necessary permits before doing these sorts of alterations. If the landowners do comply with obtaining or at least inquiring about the necessary permits, then inspection and enforcement doesn't generally seem to be problematic. Where the problems seem to be arising is in the area of action taken in ignorance or avoidance of the regulations and permit requirements. Unless our LGU partners or ourselves are informed of the violations, we are generally none the wiser to activities that are contrary to our rules. And, unless we are willing to perform constant patrols of our shorelines and shoreland areas, we are unlikely to ever know about all of the potentially damaging activities going on within our district. Whether the issues have been shoreland clearing here on Comfort Lake or encroachment into the wetland buffers in Chestnut Creek, it is only because we stumbled onto the violations that we found out about them. None of these issues were discovered because the landowners were operating under proper permits and just unintentionally violated one or more of our rules – these were either intentional or willful avoidance or ignorance of the rules, regulations, and permit requirements. Adding more redundancy to rules and regulations and enforcement between the LGUs, the DNR, and the Watershed District won't do anything to resolve this issue in my opinion. Education of our citizens and our LGUs is probably our best weapon for this problem.

As far as our coordination with our LGUs, I don't particularly care if the coordination agreement is informal or formal, as long as it is effective. The important outcome is that we are all on the same page with regard to water protection and stewardship. I am less concerned with having a party to point at when things go wrong, than I am with making sure things don't go wrong in the first place!

##### Manager Schmaltz

1. As discussed on the top of p2, the Districts Rules on erosion, stormwater Mgt and Wetland buffer for streams/lakes seems to provide coverage (i.e. control) of 90%(?)of the P and sediment threats for most of the issues that arise in the shoreland area. In addition, the City has ordinances/rules (via DNR model) to manage shoreland zoning, structure and sanitary setbacks, which I believe they are handling satisfactorily.

They are not doing well on enforcing limiting intensive removal of trees/vegetation. Staff comments imply that removal of tree and vegetation has far less negative water quality impact than creating land disturbance or creating impervious surface area. We need some relative impact estimates to clarify the situation. Assuming the impact is low and we know enforcement by the WD would take a lot of staff time and be contentious with our constituents, I would prefer to address this issue through an educational effort with heavy involvement by our Lake Assoc partners. The Burnette County voluntary tax rebate program should also be evaluated.

The City also regulates shoreland lot impervious percent. Do we know what % of the permits annually receive some type of variance? How good a job are they doing? This would have greater impact (especially with the accelerating trend to mega lake homes) than tree removal?? Also, the City does not enforce wetland dumping ordinances. This issue should also be addressed by the education program/lake associations.

2. I prefer to apply our own Rules throughout the WD. However, the City has responsibility for LWMP content (eight points listed on p97/98 of our current 10 year plan). They need to improve in certain areas:

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- (1) Sewer maps/inverts and long term cap plans...these are deficient and need improvement
  - (2) Land use...ok?
  - (3) Describe how land use impacts water quality/natural resources.... How do they do?
  - (4) They probably reference our plan... they certainly aren't spending any \$\$
  - (5) Again, they probably reference our plan.... which is OK?
  - (6) Inform district on variances, especially on impervious variances. Residences on FL are being upgraded to "mega structures" at an alarming rate and if variances are given out left and right, it will have a negative impact on the lake. This is occurring fast so we must make sure during this "switch over" time that the lake is protected. The City should provide a report to the WD on this situation.
  - (7) Inspection of Stormwater systems (MS4) ...this is improving, and progress is being made.
  - (8) OK...covered in MS\$ plan.
3. Shoreline protection. The DNR has authority and is active (not proactive). I don't think the WD should undertake this area to be more proactive. Again, make this part of an educational effort by us and the Lake Assocs. The program should encourage violations to be reported to the WD and then referred to the DNR for enforcement. The few times we have tried this the DNR has responded. Hopefully, when lakeshore owners are educated they will follow the rules..... and if not, they take the risk of being reported.
  4. The City seems to want to move a more formal MOU approach. Staff knows better than the Board where such a change would provide the most value for each partner. It also puts us in a better position to ask the City for better support in certain areas of the 8 points in their LWMP as described earlier.
  5. It is so easy to spend \$\$ now that we have no interest loan funding. We should treat the above decisions based on a cost value analysis. I know we have been talking a lot about shoreland vegetation/tree protection and wetland dumping, but it seems to me that taking an educational approach( with our Lake Assoc partners) may be more cost effective strategy than assigning staff to "search and enforce". By educating you get ahead of the problem. Without education, you are constantly chasing people down. We can consider the need for more aggressive enforcement as a possible follow up strategy.

#### Manager Dibble

1. I feel the regulatory program is adequate the way it is written. Would we need a sentence defining (ordinary high water levels)? We did talk about the 100 year mark and changing those numbers. The more City projects and weather warming conditions in the next 10 years could affect the (ordinary) high water mark which makes the setback crawl of the property.
2. I feel the District needs to apply the rules. If there was more than one governing body, it would be confusing and may cause loopholes.
3. I feel a mandatory program on new projects would ensure the work is done properly with erosion in mind. If we left it up to the contractor / owner to do it voluntary they would attempt to cut corners.

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4. How about a formal quarterly meeting with the District, DNR and the City. We could go over projects, MS-4, Permits, Grants/funding, violations.
5. It is important that if we choose to take on a larger role in the next 10 years that we add the staff and dollars to support that decision during this time of the 10 year planning.

**Manager Anderson**

[see following pages]

**MEMORANDUM**  
**Comfort Lake-Forest Lake Watershed District**

**To:** Board of Managers **Date:** August 21, 2020  
**From:** Mike Kinney  
**Subject:** Watershed Management Plan Update - Regulatory and Interagency Coordination/Impact

**Background/Discussion**

In preparation for updating Watershed Management Plan (WMP) Chapter 8: Interagency Coordination and Impact, staff recommends the Board discuss several regulatory and interagency coordination elements which have recently come up in other discussions.

**Shoreline Alterations**

For the purposes of this discussion, *shoreline* is defined as the area at or below the ordinary high water (OHW) line of a public lake, stream, or wetland. For those waterbodies designated as public waters, the OHW is established by the MN Department of Natural Resources (DNR).

The District Rules contain Rule 5.0 Shoreline & Streambank Alterations which establishes standards for shoreline/streambank work. However, as currently written, this rule is not implemented, in order to avoid duplicating the DNR’s authority over shoreline and streambank alterations. The intent of this was to reduce redundancy with DNR’s existing public waters permitting. Even without Rule 5.0 being implemented, some work occurring in the shoreline or shoreland area may be regulated by the District if it triggers another District rule (e.g. Rule 3.0 Erosion Control or Rule 4.0 Stream/Lake/Wetland Buffers). See the Permit Cheat Sheet, linked below, for a summary of rule triggers.

If the District chooses, by revising Rule 5.2.2 it could independently exercise oversight of Shoreline & Streambank Alterations by permitting and enforcement. The managers would want to consider overlap with DNR permitting, staffing capacity to accommodate increased permit activity, and public reception of increased regulation.

One alternative to compulsory standards may be voluntary programming. Burnette County is one example, offering tax rebates to landowners for shoreline conservation easements.

**Shoreland Alteration**

For the purposes of this discussion, *shoreland* is defined as the area above the OHW line of a public lake, stream, or wetland. Under the state shoreland program that the DNR oversees, the shoreland generally is defined as the riparian area up to 1,000 feet from the ordinary high water level of a lake or flowage, and 300 feet from a river or stream.

Shoreland work often varies from vegetation alterations (e.g. tree removal) to developments (e.g. home construction projects which usually trigger the Erosion Control rule, at least). Under the state shoreland program, zoning authorities must adopt a shoreland ordinance that conforms to the DNR model ordinance. The program focuses on zoning in shoreland areas, structure and sanitary setbacks from public waters, and limiting intensive removal of vegetative cover. The District has the authority to adopt and implement rules to protect shoreland areas, but such rules must be reasonably linked to water resource protection.

**Commented [JA1]:** In order to avoid no oversight during periods of DNR staff reductions, the best course for the water assets is to strike an agreement with the DNR to allow the District to provide the oversight for projects requiring the DNR.

**Commented [JA2]:** Staff can be increased at the local level to accommodate this, even as state budgets are being cut. There would be much better, and more consistent coverage with local oversight.

**Commented [JA3]:** Voluntary programs rarely work and allow inconsistent behavior, which undermines a strong regulatory program designed to protect the water assets.

**Commented [JA4]:** The problem has been very unspecific language in the state model ordinance, and consequent lack of enhancing language where needed to provide more specific guidelines in ordinance language. The District is uniquely qualified to provide this reform by establishing quantifiable minimum standards. i.e. replacing specific language for subjective terms such as “limiting intensive vegetation clearing.” Clear guidance should be provided, so the rules and ordinances are applied consistently. Any work that strays from the clear guidelines would have to be aired via a public variance process.

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While difficult to quantify precisely, erosion control practices (as required by District Rules) directly protect nearby waterbodies from phosphorus and total suspended solids (TSS) loading. Further, if the Stormwater Management rule and/or Lake/Stream/Wetland Buffer rule are triggered, further phosphorus and TSS reductions are seen over the long term. Shoreland tree removal activities have less direct water quality impacts compared to soil disturbance or creation of impervious area. If the District desires to regulate above and beyond the existing shoreland requirements currently in place in city ordinances, the potential impacts of shoreland vegetation alterations should be carefully evaluated along with the quantified potential benefit of additional regulation. If reduction of tree removal is a high priority, the Board should consider exactly why that is (e.g. water quality protection vs. aesthetics).

#### Coordination with Municipalities (e.g. MOU)

The Board may also wish to discuss the desired level of coordination with local municipalities, especially when it comes to communicating on new permit applications, site inspections, enforcement and/or oversight of stormwater facility/vegetated buffer maintenance. Currently, both the District and municipalities have their own regulatory programs and requirements. None of the municipalities in the District have opted to be the sole permitting authority (i.e. to adopt ordinances and regulatory programs that the District finds to be equally protective as the District's program, as a prerequisite to the District's withdrawal of permitting authority within the municipality). See page 97 of the Watershed Management Plan for further detail on the two levels of regulatory involvement. As of now, all municipalities overlapping District boundaries are considered Level I.

Furthermore, during the initial 60-day priority issues comment period in early 2019, the District received the following comment from City of Forest Lake, among others:

*The City of Forest Lake would like to consider an MOU to assist with educational programing and private construction site inspections. As an MS4, Forest Lake is required to have robust educational and inspection programs that they are not currently staffed to fulfill. Washington Conservation District, RCWD and CLFWLD are all actively assisting the City in meeting its educational goals. Further, CLFLWD inspects all sites which require a district permit. The MOU would help balance some of these tasks for both entities.*

The Board may also wish to discuss interest in executing MOU(s) with local municipalities, potentially starting with City of Forest Lake.

#### Questions to Consider

In Chapter 8, the District will express its intentions as to the roles it and its municipalities will play in using permitting and regulatory programs to achieve identified water resource goals and priorities. Rulemaking itself is not a part of the District's WMP revision process. However, it is typical after a WMP revision to review existing rules and make adjustments so that the rules continue to track policies articulated in the WMP. In order to draft Chapter 8, staff seeks the managers' guidance as to where the District will wish to continue to assert, or newly assert, its own regulatory authority; where it will defer to its municipalities or other public agencies with jurisdiction; and the level of resources it would apply to informal or more formal coordination with its municipalities in regulatory matters.

**Commented [JA5]:** I take issue with this statement, as trees have very deep roots, which hold the soil together, especially on a steep bank/incline. According to the Extension service, mature trees can uptake 15 gallons of water per hour on a hot summer day. It doesn't take much effort to calculate the impact of stormwater running down a slope without tree coverage.

In addition to providing water absorption, trees help to maintain the natural appearance of the lake ecosystem, as viewed from the center of the public water body – a state wide goal in embedded in the DNR Model Shoreland Ordinance language.

**Commented [JA6]:** The regulation can be shared as it is now. The District's role is providing consistent standards for regulations within the district boundaries. This is a collaborative effort and requires consistent, regular interaction, and a team building philosophy by the District with each of our LGU teams. Everything we do has to be based on science. This will require foundational studies providing quantifiable benefits for maintaining natural conditions to the greatest extent possible in shoreland zones throughout the District.

**Commented [JA7]:** Further evidence the collaborative approach is best, as it is not a change in behavior. We will be providing the rationale and background scientific data to provide consistent standards.

**Commented [JA8]:** Yes. We need to do this as it cements the understanding of all parties that we are united in the regulation and oversight of the water assets within our boundaries. We need to enhance our educational programming abilities, and will be useful for all of our LGUs.

**Commented [JA9]:** Yes, that is my point: Consistent standards with optional enforcement paths, just as we have now on Page 97 of our current 10-year plan. However, we may want to start the outreach with other LGUs at the same time as moving forward with Forest Lake, so as not to offend other LGUs.

**Commented [JA10]:** It is way to early to be this specific. The Goal should be to work with all of our LGUs to provide consistent rule and ordinance language for the protection of water resources within the District's boundaries. It will be up to the LGUs to use those standards in the areas of their cities and towns outside of the CLFLWD. I expect the LGUs will want to maintain local water permitting authority, but if our program is good, they may want to cede that to the District. We just don't know the answer to that question at this time, so we should expect it will continue as it has been. However, with the new statewide effort to focus water planning on the larger HUC8 level, the LGUs may be in a more favorable mood to change regulation oversight, as well as to apply the standards to all areas within their municipal boundaries.

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Considering the information above, the Board may want to discuss the following questions:

1. Is the District's regulatory program as it now exists allowing the District to have adequate oversight of activities with water resource impacts? If not, what impacts do the managers observe that the District is not adequately addressing in its regulatory program, but ought to be?
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#### Links:

- [Permit Cheat Sheet \(Rule Triggers\)](#)
- [Watershed Management Plan – Intergovernmental Coordination & Impact, Page 97](#)

**Commented [JA11]:** NO.

**Commented [JA12]:** Inconsistent enforcement due to nebulous language allowing for different interpretations of the shoreland ordinance and our own rules. We are also not consistent with our own enforcement at this time, so we have some internal issues of our own to deal with.

**Commented [JA13]:** It's really a decision for these LGUs to make. The District was founded because inconsistent interpretation and application of the state guidance and local ordinances were causing downstream damage. Forest Lake City, in particular at that time, was also allowing small older cabin lots to transform into larger year round homes. An understanding of the runoff problems larger impervious surfaces that close to a waterbody can cause, was lacking at that time. Watershed Districts have an enormous opportunity to educate and inform LGUs on clean water friendly and sustainable development practices. Districts don't have to do all the enforcement, but can educate, instruct and oversee that well designed and consistent policies are applied throughout the District.

**Commented [JA14]:** The MN DNR has a voluntary 'Rate your Shore' program to encourage and educate shoreland owners on good practices. I've been promoting this program for three years with little success. There will always be a handful of people who will incorporate sustainable practices, but most will not. For the benefit of our water resources, we will need sound scientific based and quantifiable based rules and ordinances written in -clear, non-subjective and open to interpretation - language.

**Commented [JA15]:** The same as previously mentioned: Open, consistent dialogue with local LGU staff on how we can work together to improve the outcome and sustainability of our shared and citizen-owned water resources.

**Commented [JA16]:** We are in the service business, so the question should be: How susceptible are our water resources to inconsistent application of best management practices and ordinance/rule interpretation and enforcement? As this topic has come up numerous times, it is safe to conclude that we do have a problem. Our next step is to analyze what is needed to bring consistency throughout the District and begin a consistent program of interacting with LGU to define the problem and devise a work plan to achieve our common goals. CLFLWD staff has not been adequate to do this type of coalition building in the past. However, as we transition from CIP work, to sustainable program work, we will need staff to keep these unique programs operating efficiently and successfully. That has always been my understanding of the process over time. We will need to deliver consistent, meaningful and measurable outcomes, so hiring dedicated, talented, and experienced staff will be a critical element of success.